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April 6, 2016

VIA Federal Express

Nicoletta Di Forte
US Environmental Protection Agency
Region 2; Mail Code: 19th Floor
290 Broadway
New York, New York 10007

Re: Lower 8.3 Miles of the Lower Passaic River

Dear Ms. Di Forte:

On behalf of my clients¹, this letter confirms the telephonic request made April 5th by Dave Rabbe of Tierra to Ray Basso that EPA Region 2 meet with representatives of OxyChem, Maxus, and Tierra prior to Region 2's issuance of the second letter described in its letter of March 31, 2016 regarding the remedial design process for the Lower 8.3 Miles of the Lower Passaic River. I understand that Region 2 is willing to participate in such a meeting, prior to issuance of the second letter, and that Thursday, April 14th at EPA Region 2's Manhattan offices is acceptable to both Region 2 and my clients. My clients and I appreciate Region 2's willingness to meet before taking further action.

We have requested this meeting due to our concerns regarding, among other things, the future unintended consequences of Region 2's contemplated enforcement approach for the design phase of the Lower 8.3 Miles of the Lower Passaic River. My clients recognize the difficulties associated with convening a group of parties to perform the remedial design work. We are concerned, however, that the enforcement approach presented in Region 2's March 31st letter will create long-term problems—likely to include greater delay and wasted resources that would otherwise be available for remediation—that outweigh the short-term considerations Region 2's approach appears intended to address. One of our principal

¹ Occidental Chemical Corporation ("OxyChem"), Maxus Energy Corporation ("Maxus"), and Tierra Solutions, Inc. ("Tierra")

concerns is that this enforcement approach would encourage recalcitrance on the part of the more than 100 PRPs that have been identified by Region 2 as liable for the Lower Passaic River and which bear a share of responsibility for the 8 contaminants of concern that Region 2's Record of Decision focused on (as well as numerous other contaminants affecting the Lower Passaic River). Under Region 2's proposed approach, these PRPs will have no incentive to cooperate in the future.

We look forward to gaining a better understanding of Region 2's views regarding these issues and ways to address these concerns, among others, at our April 14th meeting. In the meantime, please advise me of EPA's preferred start time for the meeting and expected meeting attendees.

Very truly yours,

Benjamin S. Lippard /Kmm

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cc: Raymond J. Basso, EPA, Region 2
Sarah P. Flanagan, EPA, Region 2 ✓
Brian Donohue, DOJ